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EEOC & Camie Neal v. Best Buy Here Pay Here, L.L.C. Best Motor Company Leasing, Inc.

Judge Gary A. Fenner

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EEOC & Camie Neal v. Best Buy Here Pay Here, L.L.C. Best Motor Company Leasing, Inc.

Keywords

Equal Employment Opportunity Commission, Camie Neal, 06-5096-CV-SW-GAF, Consent Decree, Retaliation, Sexual Harassment, Termination, Sex, Female, Transportation, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION and)
CAMIE NEAL,)
)
Plaintiff/Plaintiff Intervenor,)
)
v.)
)
BEST BUY HERE PAY HERE, L.L.C.)
BEST MOTOR COMPANY LEASING,)
INC.,)
)
Defendants.)

Case No. 06-5096-CV-SW-GAF

AMENDED CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“EEOC”) commenced this action against Defendants Best Buy Here Pay Here, L.L.C. and Best Motor Company Leasing, Inc. alleging that Camie Neal was subjected to sexual harassment by her supervisor during her employment at Defendant’s dealership in Joplin, Missouri, and discharged in retaliation for her complaining about such sexual harassment, in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (“Title VII”). Camie Neal (“Plaintiff-Intervenor”) was permitted by the Court to intervene through private counsel in the EEOC’s suit and has asserted sexual harassment and retaliatory discharge claims against Defendants under both Title VII and the Missouri Human Rights Act (“MHRA”).

For purposes of settlement and compromise only, and with no admission of liability by Defendants, the parties have advised the Court that they wish to resolve the instant

controversy without the expense, delay, and burden of further litigation. The parties acknowledge that the settlement of this lawsuit and entry of this Consent Decree do not constitute and shall not be construed as an adjudication or admission of liability under Title VII, the MHRA, or any federal or state law.

THEREFORE, it is the finding of this Court, made on the pleadings, the record as a whole, and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the requirements of Title VII and the MHRA shall be carried out by the entering of this Decree; (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among all parties; and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

I. General Provisions

1. The Consent Decree is being entered by and with the consent of the parties for purposes of settlement.
2. Defendants shall not discriminate against any employee by subjecting such employee to sex discrimination, including sexual harassment, at any of Defendants' dealerships or other facilities.
3. Defendants shall not retaliate against any employee because such employee has:
(i) opposed any employment practice alleged to constitute unlawful sex discrimination, including sexual harassment; (ii) participated in an investigation concerning or related to allegations of possible sex discrimination, including sexual harassment; (iii) participated in this lawsuit or the

underlying EEOC investigation of the charge which formed the predicate for this lawsuit; and/or (iv) benefited in any manner as a result of the Consent Decree.

II. Relief for Plaintiff-Intervenor

1. Within ten (10) days of the entry of the Consent Decree by the Court, Defendants shall pay an amount totaling \$29,000.00, as and for damages and attorneys' fees in this action, and simultaneously deliver by certified mail to William Fleischaker, counsel of record for Plaintiff-Intervenor Camie Neal, checks totaling such amount along with applicable completed tax form(s).

2. Within ten (10) days of the entry of the Consent Decree by the Court, Defendants shall cause Bryan Hunt or other appropriate official to sign a letter of reference for Plaintiff-Intervenor in the form shown in Exhibit A on company letterhead and deliver such letter by certified mail to William Fleischaker, counsel of record for Plaintiff-Intervenor. Defendants shall include such signed reference letter in Plaintiff-Intervenor's permanent personnel file.

3. In the case of inquiries by prospective employers regarding Plaintiff- Intervenor, Defendants shall limit responses to the information contained in such reference letter and make copies of such letter available to prospective employers upon request.

4. Within ten (10) days of the entry of the Consent Decree by the Court, Defendants shall mail copies of the checks and signed letter described paragraphs 1 and 2, above, to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

III. Injunctive Relief

1. Defendants shall immediately terminate and shall not re-hire William Eaton.

2. Within thirty (30) days of the entry of the Consent Decree by the Court,

Defendants shall distribute to all employees a letter, prepared on company letterhead and signed and dated by Bryan Hunt, stating that: (i) sex discrimination and sexual harassment are strictly prohibited and will not be tolerated; (ii) employees who engage in sex discrimination or sexual harassment conduct will be disciplined up to and including discharge; (iii) employees are encouraged and requested to report possible sex discrimination, including sexual harassment, to any supervisor or manager and/or to the Equal Employment Opportunity Commission; (iv) employees making such reports will not be subject to retaliation by Defendants or any of their employees; and (v) any employee found to have engaged in sex discrimination, sexual harassment, or retaliation shall be disciplined up to and including discharge. At the time of distribution, a copy of such memorandum shall be simultaneously mailed to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103.

3. Within thirty (30) days of the entry of the Consent Decree by the Court,

Defendants shall post in employee break rooms and other locations where such information is commonly posted at any and all dealerships or other facilities in Missouri and Arkansas both the notice required by EEOC regulation 29 CFR 1601.30, which is set forth in Exhibit B, and the Notice attached to the Consent Decree as Exhibit C. The notice required by such regulation shall remain posted in perpetuity, as required by law, and such Notice shall remain posted during the term of the Consent Decree.

4. Within ninety (90) days of the entry of the Consent Decree by the Court, Defendants shall cause all supervisory and management employees at any and all of Defendants' dealerships and other facilities located in Missouri and Arkansas, including but not limited to Nita Osborne and Brent Pilgrim, to attend three (3) hours of sex discrimination and sexual harassment training provided by a reputable training vendor. Within thirty (30) days of the entry of the Decree by the Court, Defendants shall provide the names and contact information for potential training vendors in writing to Rebecca S. Stith, Senior Trial Attorney, EEOC, 1222 Spruce St., Room 8.100, St. Louis, MO 63103, for review and approval.

5. Within six (6) months of the entry of the Consent Decree by the Court, Defendants shall provide written certification of compliance with the requirements set forth in Sections II and III of the Consent Decree to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103. Such certification shall include copies of any and all documents referenced or described in Sections II and III, above, that Defendants have not already provided to the EEOC pursuant to the Consent Decree.

6. During the term of the Consent Decree, Defendants shall provide written notice to Rebecca S. Stith, Senior Trial Attorney, Equal Employment Opportunity Commission, St. Louis District Office, Room 8.100, 1222 Spruce St., St. Louis, MO 63103, within thirty (30) days of the receipt, of any and all internal complaints, whether oral or written, alleging possible sexual harassment at any of Defendants' dealerships or other facilities located in Missouri and Arkansas. Such notice shall include the name of the person making the complaint, the date of

the complaint, the name of the alleged harasser, the nature of the complaint, and the resolution of the complaint following Defendants' investigation.

7. During the term of the Consent Decree, Defendants shall allow representatives of the EEOC to review compliance with the injunctive provisions of the Consent Decree, including but not limited to on-site inspection and copying at any and all of Defendants' dealerships and other facilities in Missouri and Arkansas with at least five (5) business days' written notice from the EEOC in advance of any such inspection.

IV. Term and Effect of Decree

1. By entering into the Consent Decree, the parties do not intend to resolve any charges of discrimination other than the charge filed by the Plaintiff-Intervenor that created the jurisdictional foundation for the Complaint and Intervenor Complaint filed in this case.

2. The Consent Decree shall be in force for a period of three (3) years during which term the Court shall retain jurisdiction for purposes of compliance and enforcement.

3. The Consent Decree shall be binding upon the parties hereto, their successors and assigns. Defendants shall notify any successors and assigns, including but not limited to purchasers, of the obligations of the Consent Decree prior to the sale of Defendants' dealerships or other facilities in Missouri and/or Arkansas during the three (3) year term of the Consent Decree.

4. The parties shall bear their own costs and attorneys' fees.

SO ORDERED:

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: September 11, 2007

EXHIBIT A [Company letterhead]

To Whom It May Concern:

Camie Neal was employed as a sales person at the Best Buy Here Pay Here Dealership in Joplin, Missouri, from _____ to _____. Ms. Neal's performance met or exceeded expectations in all respects.

By: _____

Bryan Hunt, President

EXHIBIT B

TITLE 29-LABOR

COMMISSION

PART 1601--PROCEDURAL REGULATIONS--Table of Contents

Subpart C--Notices to Employees, Applicants for Employment and Union
Members

Sec. 1601.30 Notices to be posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program that has an obligation under title VII or the ADA shall post and keep posted in conspicuous places upon its premises notices in an accessible format, to be prepared or approved by the Commission, describing the applicable provisions of title VII and the ADA. Such notice must be posted in prominent and accessible places where notices to employees, applicants and members are customarily maintained.

(b) Section 711(b) of Title VII makes failure to comply with this section punishable by a fine of not more than \$110 for each separate offense.

[42 FR 55388, Oct. 14, 1977, as amended at 55 FR 2518, Jan. 25, 1990; 56 FR 9625, Mar. 7, 1991; 62 FR 26934, May 16, 1997]

EEOC Publications may be obtained by contacting 1-800-669-3362.

EXHIBIT C [Company letterhead]

NOTICE TO EMPLOYEES

This notice is being posted pursuant to a Consent Decree entered to resolve claims of sexual harassment in the case of Equal Employment Opportunity Commission, et al. v. Best Buy Here Pay Here, et al., No. 06-5096-CV-SW-GAF, filed in the United States District Court for the Western District of Missouri.

Federal and Missouri laws prohibit discrimination against any employee or applicant for employment because of the individual's disability, race, national origin, color, religion, sex, or age (40 and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. Such laws also prohibit retaliation against employees because they have reported or opposed practices that they believe discriminate on the basis of disability, race, national origin, color, religion, sex, or age (40 and over), have filed charges with the Equal Employment Opportunity Commission ("EEOC") or other local, state, or federal government agency, or have participated in or cooperated with an investigation by the EEOC or other local, state, or federal government agency.

In particular, Federal and Missouri laws prohibit the sexual harassment of employees. Best Buy Here Pay Here and Best Motor Company Leasing support and will comply with such laws and will not take retaliate or tolerate retaliation against any employee for exercising his or her rights under such laws.

Employees are strongly encourage promptly to report possible discrimination, including sexual harassment and retaliation, to any supervisory or management official at any time. Employees also may contact the EEOC's Kansas City Area Office, which is located at Gateway Tower II, 4th & State Ave., 9th Floor, Kansas City, KS, 66101, 913-551-5656 or 1-800-669-4000. The EEOC's web site is www.eeoc.gov.